

RWANDA / JUDGMENT

Re NGENDAHAYO KABUYE (ADD)

RLR V.3-2023

COURT

Supreme Court

DECIDED

18 February 2022

CASE / FILE NUMBER

RS/INCONST/SPEC 00004/2021/SC

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Re NGENDAHAYO KABUYE (ADD)

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Text

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Re NGENDAHAYO KABUYE (ADD) [Rwanda SUPREME COURT – RS/INCONST/SPEC 00004/2021/SC (Mukamulisa, P.J., Cyanzayire, Nyirinkwaya, Muhumuza and Karimunda, J., February 18, 2022)]
Constitution – Unconstitutional laws – Interest to sue – While the interest to sue should be understood in a broader sense, the petitioner also has the obligation to demonstrate his/her personal interest in the case – An advocate, in his/her capacity as a legal professional, is entitled to file a petition for unconstitutionality not on his/her own behalf, but in the interest of justice.
Facts: Counsel Ngendahayo Kabuye initiated a petition requesting to decide on the inconsistency of Article 8, Paragraph 2, Article 52, Paragraph 3, Article 75, and Article 76 (1o) of Law No27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions, with Articles 15, 18, and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in

2015. The petitioner argues that these provisions violate the rights of other heirs, especially children who are not born from the widow(er), by granting the widow(er) the right to own alone the property on the pretext of the marriage under the community of property regime. He argues that the reason he finds these provisions to be contravening is the fact that in the event one of the spouses dies and other children not born from their

relationship, as well as other heirs in general, appear, the surviving spouse relies on those provisions to claim the entire property for himself/herself, excluding those heirs, especially when he/she does not have the obligation to cater for them. Even if he/she does not have such an obligation, he/she sometimes fails to fulfill it properly, resulting in family conflicts and recurring lawsuits. The parties initially debated the issue of determining whether the petitioner has the interest to sue. He stated that, as an advocate, he has a duty to promote the development of the law, and as a Rwandan citizen, he believes that the provisions against which he petitioned infringe upon society, even if they do not personally affect him. He also pointed out that there are cases of individuals who have been impacted by conflicts arising from those provisions. Furthermore, he emphasized that his position aligns with the stance adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC. The Government of Rwanda also argues that considering the position adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC, the petitioner has the interest to sue. Held: 1. While the interest to sue should be understood in a broader sense, the petitioner also has the obligation to demonstrate his/her personal interest in the case.

2. An advocate, in his/her capacity as a legal professional, is entitled to file a petition for unconstitutionality not on his/her own behalf, but in the interest of justice. The petitioner has an interest to file the petition and request the Court to declare the provisions of the law inconsistent with the Constitution. The hearing on the merits of the case shall be resumed.

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Statutes referred to: Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts, article 72. Cases referred to: Democratic Green Party of Rwanda (DGPR) v. Government of Rwanda RS/SPEC/0002/15/CS, rendered by the Supreme Court on 09/09/2015. Re Mugisha, RS/INCONST/SPEC 00002/2018/SC rendered by the Supreme Court on 18/01/2019. Re Byansi, RS/INCONST/SPEC 00002/2021/SC rendered by the Supreme Court on 24/12/2021. Re Byansi, RS/INCONST/SPEC 0003/2021/SC rendered by the Supreme Court on 10/12/2021.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] Counsel Ngendahayo Kabuye has petitioned the Supreme Court, requesting the Court to declare Article 8(2), Article 52(3), Article 75, and Article 76(1o) of Law no 27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions inconsistent with Articles 15, 18, and 34 of the Constitution of the Republic of Rwanda of 4/06/2003 revised in

2015. The petitioner argues that these provisions grant the widow(er) the exclusive right to own alone the property on the pretext of their marriage under the community of property regime, thereby disregarding the rights of other heirs, especially the children not born to the widow(er). [2] The four articles against which he petitioned the Supreme Court to be declared inconsistent with the Constitution are as follows: - Article 8(2) provides that: "Where the dissolution of such a regime occurs due to death of one of the spouses, the

property is owned by the surviving spouse until succession execution", - Article 52(3) provides that "succession for spouses opens when they both decease or in case one of them remarries unless otherwise provided by law", - Article 75 provides that "The surviving spouse is entitled to take part in succession of the deceased spouse's estate. The surviving spouse called to succeed inherits in equal portions with first category heirs", - And article 76 (1o) provides that "Succession of spouses married under the community of property regime is done as follows: if one of the spouses dies, the surviving spouse is entitled to the entire property and fulfills the duty to take care of their children and that of the legitimate children of the de cujus". [3] Counsel Ngendahayo Kabuye alleges that considering the provisions of the aforementioned articles, he finds them inconsistent with the Constitution of the Republic of Rwanda of 4/06/2003 revised in 2015. He argues that these articles obstruct the execution of other legal provisions relating to succession, as well as other legal instruments pertaining to

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property rights. He states that the reason he finds these provisions to be contravening is the fact that in the event one of the spouses dies and other children not born from their relationship, as well as other heirs in general, appear, the surviving spouse relies on those provisions to claim the entire estate for himself/herself, denying the rights of those heirs, especially when he/she does not have the obligation to cater for them. Even if he/she does have such an obligation, he/she sometimes fails to fulfill it properly, resulting in family conflicts and recurring lawsuits. [4] He further declares that those heirs have lost various cases, and this allowed the widow(er) to hold the estate by himself/herself, despite the principle that all people are equal before the law. He emphasizes that the Government should protect the rights of children to inherit the estate of their parent and prevent family conflicts. [5] The hearing of the instant case took place on January 13, 2022, with Ngendahayo Kabuye being assisted by Counsel Umulisa Kayigamba Alice and Counsel Serugo Jean Baptiste. The Government of Rwanda was represented by State Attorneys Counsel Kayitesi Petronille and Counsel Ntwali Emile. [6] At the outset of the hearing, the Court initially decided on the request for intervening in the capacity of a friend of the court (*Amicus Curiae*) submitted by the Rwandan non- governmental organization for the promotion of the rights of women and children (HAGURUKA), represented by Umuhoza Ninette. The Court deemed that the arguments raised by that organization are not significantly different from the arguments raised by one of the parties, and therefore not sufficient to justify its intervention as a friend of the court to contribute to the trial of the case. It relied on the position it adopted on a similar issue, where it held that for a person or a legal entity to be permitted to intervene as a friend of the court, they should demonstrate the contribution they would make to the court that is different from the arguments of the parties to the case. It decided that the Organisation HAGURUKA is not admitted as a friend of the court in this case. [7] The hearing proceeded, and the parties disputed the issue regarding whether Counsel Ngendahayo Kabuye has an interest to petition for the inconsistency of Article 8(2), Article 52(3), Article 75, and Article 76(1o) of Law no 27/2016 of 08/07/2016, governing matrimonial regimes, donations, and successions, with Articles

15, 18, and 34 of the Constitution of the Republic of Rwanda. II. THE LEGAL ISSUE OF THE CASE Determine whether Counsel Ngendahayo Kabuye has an interest to petition the Court [8] Counsel Ngendahayo Kabuye was given the opportunity to explain the interest he has in this case. He stated that, as an advocate, he has a duty to promote the rule of law. Being a Rwandan, he believes that the provisions against which he petitioned the Court undermine the society, even though they have not yet affected him personally. He pointed out that various people have faced problems associated with these provisions, leading to conflicts. He, therefore, raises this argument to assert his interest in requesting the amendment of the aforementioned provisions of the law. He particularly emphasizes that his arguments align with the position

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adopted by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC. In paragraph 26 of that judgment, the Supreme Court stated that the interest of advocates is perceived within their profession and is not solely limited to the petitioner, but rather extends to all individuals subject to the law. [9] Counsel Kayitesi Petronille and Counsel Ntwali Emile, the State Attorneys representing the Government of Rwanda, also argued that, based on the position taken by the Supreme Court in the judgment RS/INCONST/SPEC 00002/2018/SC, specifically in paragraphs 30 and 31, they believe that Counsel Ngendahayo Kabuye has a legitimate interest to bring forward the lawsuit. DETERMINATION OF THE COURT [10] Article 72, paragraph one of the Law n°30/2018 of 02/06/2018 determining the jurisdiction of courts provides that: "The Supreme Court is petitioned by any person or company and associations with legal personality over petitions seeking to declare unconstitutional a law if they have any interest." [11] The issue of interest regarding the petitioner for the unconstitutionality of certain provisions of the law has been examined by this Court in various cases, including the case initiated by Counsel Mugisha Richard. Both parties in the present case have also raised this precedent. The Court has determined that the concept of interest in the case is intended to establish that the petitioner has a specific right he/she seeks to be entitled through the court's decision or he/she requests the court to make decisions that would benefit him/her. It also explained that the petitioner must have a legitimate interest in his/her petition to prevent individuals from using it as a platform to grandstand or advertise their activities, as well as to safeguard against those seeking to exploit rights reserved for others. [12] The Supreme Court emphasized that when it comes to constitutional petitions, the interest should be broadly understood, particularly in a developing country like Rwanda where people may not fully comprehend their constitutional rights and require assistance in exercising them through the courts. [13] This position was reiterated in the case initiated by BYANSI Samuel Baker, where the Court further added that, in order to avoid unnecessary cases that could hinder the functioning of the courts, the petitioner has the right to demonstrate the personal interest he/she has in the case. This personal interest should be one that he/she personally aspires to protect or would directly be deprived of by the law he/she is requesting to be repealed. [14] In this case, Counsel NGENDAHAYO KABUYE requests the Supreme Court to determine that the aforementioned provisions violate certain rights, specifically the deprivation of the right that guarantees surviving children of one spouse the

inheritance of their parent's property upon his/her death by the step-spouse. Additionally, there are instances where the surviving spouse neglects their duty of care towards these children, which indicates unequal treatment before the law, contrary to the legal provision that provides for equal treatment. [15] Based on the fact that Law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions is a statute that applies to every individual in Rwandan society,

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without any exclusion regarding marriage, succession, or property rights, it is binding for all Rwandans, and its provisions should be respected by everyone. This implies that, although the law pertains to all Rwandans in general, it also applies to Counsel NGENDAHAYO KABUYE, who initiated the present petition. [16] The Court finds that Counsel NGENDAHAYO KABUYE has a legitimate interest in his petition, as he seeks a ruling that certain provisions of the Law governing matrimonial regimes, donations, and successions are inconsistent with the Constitution. Even though he has not yet personally encountered any issues or faced violations of the law, he is still one of the individuals to whom the law applies. [17] In addition, the Court finds that Counsel NGENDAHAYO KABUYE, as an advocate who plays a role in promoting the rule of law within the society, has a valid interest in initiating a petition to challenge the constitutionality of certain provisions of Law n°27/2016 of 08/07/2016 governing matrimonial regimes, donations, and successions. This holds true even if it is evident that he has no personal interest in the petition. This position aligns with the stance adopted in the case initiated by Mugisha Richard. III. DECISION OF THE COURT [18] Holds that Counsel NGENDAHAYO KABUYE has a legitimate interest in initiating a petition seeking to declare the provisions of the Law inconsistent with the Constitution. [19] Orders that the hearing shall be resumed on 12/04/2022 at 8:00 AM.

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